No. 678

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

GUY E. WILLIAMS, CHANCELLOR, etc.
PETITIONER

vs.

CLAUDE A. RANKIN
ARKANSAS COMMISSIONER OF STATE LANDS
RESPONDENT

PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF ARKANSAS

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Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Arkansas entered in the above entitled case on December 8, 1952.

OPINIONS BELOW

This was an original action in the Supreme Court of Arkansas filed there to prohibit the Chancery Court of Pulaski County, Arkansas, from proceeding to try the case of *R. V. Kimble* v. *Claude A. Rankin, Arkansas Commissioner of State Lands,* docket number 93,952, which case was filed in the Pulaski Chancery to enjoin the Arkansas Commissioner of State Lands from seizing and

selling certain real estate which Mr. Kimble alleged to own. The majority (as supplemented), concurring and dissenting opinions of the Supreme Court of Arkansas (R.49-57) are unreported. The *per curiam* order of the Supreme Court of Arkansas (R.59) is unreported.

JURISDICTION

The final judgment of the Supreme Court of Arkansas was entered on December 8, 1952 (R. 59). By order entered in this Court on March 2, 1953, the time for filing this petition was extended to and including April 1, 1953.

The jurisdiction of this court is invoked under Title 28, U. S. Code, Section 1257(3). Although the federal questions here sought to be reviewed were not discussed by the majority of the Supreme Court of Arkansas in its opinion (R.49-54), or in the concurring opinion (R.54), or in the dissenting opinion (R.55-57), or in the majority opinion as supplemented (R.59), all of such questions were specifically and properly by brief and argument and petition to rehear (R.57-58) considered by and determined adversely to the interests of petitioner by the Supreme Court of Arkansas as is reflected by "Certificate as to Existence of Federal Question" ordered to be entered by the Court *en banc*. Said certificate appears at pages 59-60 of the record and is attached hereto as Appendix A, page 15, *infra*.

QUESTION PRESENTED

Whether the State of Arkansas can, by legislative enactment, judicial decision or administrative ruling, clothe a member of its executive branch of government with absolute and final power to seize and sell land claimed to be owned by and vested in a private citizen, all without compensation, and at the same time deny to that

private citizen access to the judiciary to prove his alleged right, title and interest in and to said land.

STATUTE INVOLVED

The Arkansas Statute involved is Act 282 of 1917, Acts of Arkansas and which is codified in the Arkansas Statutes of 1947 at Sections 10-601 to 10-607, inclusive. The pertinent provisions thereof are printed in Appendix B, *infra*, page 17.

STATEMENT

R. V. Kimble, a citizen and resident of the State of Mississippi (R.11) purchased 3,000 acres, more or less of timber land in the year 1933 (R.11). The deed of conveyance described this purchase as "Island 87, and all accretions thereto" . This land is located in the extreme southeast corner of the State of Arkansas in Chicot County (R.11). This purchase was from a private citizen whose family had claimed exclusive right, title and possession thereof for many years (R.12). Mr. Kimble has occupied this land exclusively since that time with the two exceptions hereinafter to be noted, one occurring in 1937 and the other, out of which causes this action to arise, in 1947.

In the year 1937 an individual, stranger to the title, made application to the Arkansas Commission of State Lands to purchase a part of the land included in Mr. Kimble's conveyance in 1933, this application being made under and pursuant to the provisions of Act 282 of 1917, Acts of Arkansas (R.16). The ostensible theory of this application to purchase was that a part of this land was not "Island 87 or accretions thereto", instead, had formed as a separate and independent island in the Mississippi River and had thereafter joined with "Island 87 or its

accretions". Mr. Kimble appeared before the Land Commissioner of Arkansas to defend his title and in 1939, some two years later, the Arkansas Land Commissioner entered an Order finding that the land in question had not formed as contended by applicant, instead constituted a part of "Island 87 and accretions thereto" (R.12-13).

Mr. Kimble enjoyed the undisputed and undisturbed title and possession to and of this land until the year 1947 at which time another and similar application was filed with the Arkansas Land Commissioner (R.16). Once again Mr. Kimble appeared to defend his title and for the next four years intermittent hearings were held by the Land Commissioner sitting as judge and jury. Once again the theory of applicant was that the land he sought to purchase (as State land) constituted an independent island formation and was not a part of "Island 87 or accretions thereto" (R.16). The acreage involved in this application constituted approximately 1,500 acres or about one-half of the acreage which Mr. Kimble thought he purchased in 1933 (R.24).

In the early part of March, 1952, Mr. Kimble learned that the Arkansas Land Commissioner was about to issue a State deed to the applicant in succession thereby sustaining the position asserted by the applicant that the land in question had formed as a separate island and denying to Mr. Kimble his argument that the land formed as "Island 87 and accretions thereto". Immediately upon learning this Mr. Kimble filed a complaint in the Chancery Court of Pulaski County, Arkansas, (docket number 93,952), alleging therein that he was the sole owner of this land, setting forth the Arkansas Land Commissioner's threatened act to sell his land, alleging that such threatened act was unconstitutional and illegal, and asked that court to restrain the Arkansas Land Commissioner from

selling his land (R.11). The Chancery Court of Pulaski County, Arkansas, issued a temporary restraining order (R.15) and on Motion to Dissolve by the Land Commissioner (R.15) the court continued the restraining order in effect and ordered the Land Commissioner to plead further in that cause, thus sustaining its jurisdiction to hear that cause on its merits (R.44-46).

The Land Commissioner did not plead further in the Chancery action, instead filed a petition in the Arkansas Supreme Court asking that court to grant a writ of prohibition and prevent the Chancery Court of Pulaski County, Arkansas, from proceeding any further with the case of *Kimble* v. *Rankin,* docket number 93,952 (R.1-47). Mr. Kimble responded to this petition (R.48), but the Arkansas Supreme Court, in a divided opinion, granted the writ and thus denied the jurisdiction of the Pulaski Chancery Court to hear the issues in the case of *Kimble* v. *Rankin* (R.49-57). A petition to rehear the grant of this writ of prohibition was filed in the Arkansas Supreme Court (R.57), but that court denied rehearing in a *per curiam* order dated December 8, 1952 (R.59).

The apparent theory of the Arkansas Supreme Court in granting writ of prohibition was that the suit of Mr. Kimble against Mr. Rankin in the Chancery Court of Pulaski County, Arkansas, was, *per se,* a suit against the State of Arkansas and thereby contrary to Article 5, Section 20 of the Constitution of Arkansas. The arguments of Mr. Kimble that to so construe this as a suit against the State of Arkansas, and thereby deny him access to the judiciary to prove his ownership of the land in question, discriminated against him and denied to him the due process of the law and the equal protection of the law contrary to Section 1 of the 14th Amendment of the Constitution of the United States. (Appendix A, page 15, *infra.*)

SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of Arkansas erred:

1. In not holding that Mr. Kimble is being discriminated against and deprived of his property without due process of law contrary to the provisions of Section 1 of the 14th Amendment to the Constitution of the United States.

2. In not holding that Mr. Kimble is being discriminated against and denied the equal protection of the laws contrary to the provisions of Section 1 of the 14th Amendment to the Constitution of the United States.

3. In holding that the suit of *Kimble* v. *Rankin*, Chancery Court of Pulaski County, Arkansas, docket number 93,952 was a suit against the State of Arkansas.

4. In not holding that the Land Commissioner of Arkansas is subject to and bound by the same rules of law which that court has enunciated and consistently held applicable to all other State officials, employees and agencies.

5. In denying Mr. Kimble access to the judiciary to prove his asserted right, title and interest in and to the real property located in Arkansas.

6. In holding that the General Assembly of Arkansas, by Act 282 of 1917, has the power to grant judicial powers to the executive branch of Arkansas government.

7. In holding that Act 282 of the Acts of Arkansas for the year 1917 was a constitutional grant of power to the Arkansas Land Commissioner to seize and sell land claimed by a private citizen, without compensation to the private citizen, and at the same time deny to the private citizen

access to the judiciary to prove his right, title and interest in and to said lands.

8. In granting the writ of prohibition and thus preventing the Chancery Court of Pulaski County, Arkansas, from proceeding with the case of *Kimble* v. *Rankin*, docket number 93,952, on its merits.

REASONS FOR GRANTING THE WRIT

1. The decision of the court below, as evinced by the majority and concurring opinions, clearly approves the power of the executive branch of state government, under color of a legislative enactment, to seize and sell, without compensation, the land of a private citizen and at the same time deny to the private citizen access to the judiciary to prove his right, title and interest therein, regardless of how meritorious his claim might be. This under the theory that any attempt by the private citizen to assert his rights and prove his claim constituted an action against the State of Arkansas contrary to Article 5, Section 20 of the Arkansas Constitution. This is clearly in derogation of the basic rights of the private citizen and deprives him of his property without due process of law and is therefore contrary to Section 1 of the 14th Amendment to the Constitution of the United States.

In this particular the Arkansas Supreme Court indicated in its majority and concurring opinions that this invasion on the private rights of the citizen was slight and since it might be corrected in subsequent litigation, *sans* the Land Commissioner, no harm had been done. This, however, does not satisfy the exacting demands of due process of law and the protection of the rights of the individual. Any departure, no matter how minute, is as dangerous and evil as though the entire constitution had been ignored. The strict requirements of due process de-

mand that the private citizen have access to the judiciary to defend, in all instances, any encroachment against his vested property rights, large or small. Nothing short of that careful and complete observance of due process can preserve the rights of the individual.

The Arkansas Supreme Court would permit a servitude to exist on this land in derogation of the rights of Mr. Kimble. The complete use of this land has been destroyed. He can neither sell, lease or mortgage it; he cannot cut timber from it, finance a crop on it, improve it, fence it or drain it. The burden of assuming the initiative of litigation, with attendant burdens, added employment of attorneys, additional court costs, has been cast upon Mr. Kimble, to defend to prove his title against the *prima facie* title permitted by the Arkansas Supreme Court decision. And, notwithstanding his long period of ownership, occupancy and payment of taxes, all things being equal in subsequent litigation, Mr. Kimble will lose as against this *prima facie* title of the State. The burden of proof, a shield to which Mr. Kimble would otherwise be entitled, has been allowed to shift.

Why should the suggestion that this was the property of the State of Arkansas preclude inquiry into the truth of such a suggestion by judicial investigation? The action brought by Mr. Kimble in the Chancery Court of Pulaski County, Arkansas, is one by a plaintiff capable of suing; the defendant, Mr. Rankin, has no personal exemption from suit; and it is a cause of action cognizable in that court. Inquiry into the right, title and ownership of real property is historically a judicial function and the grant of this power to the executive branch of government to the exclusion of the judiciary, is contrary to the due process clause of the 14th Amendment to the Constitution of the

United States. *U. S.* v. *Lee,* 106 U. S. 196, 220, 27 L.ed. 171, 181.

2. Peitioner asserts that the land in question belongs to him and that his right thereto became vested by virtue of his purchase from other private citizens in the year 1933. The attack by the Arkansas Land Commissioner does not deny this purchase or possession. Instead, the Land Commissioner argues he has investigated the matter beyond the record title and determined that the land in question formed many years ago in such a way as to vest title in the State and subject to sale under the provisions of Act 282 of 1917, Acts of Arkansas. The Land Commissioner further asserts, which assertion has been approved by the majority and concurring opinions of the Arkansas Supreme Court, that because he has so determined this the judiciary has no jurisdiction to question him or to prevent him from issuing a State deed and thus beclouding and burdening the vested title which Mr. Kimble asserts. The stamp of approval to this position is hidden under the guise that such an action by the private citizen to assert his title to this land claimed by the State is a suit against the State of Arkansas and precluded by Article 5, Section 20 of the Arkansas Constitution. It is not contended that the State deed does not place a cloud on the title, or, in fact that it creates a *prima facie* title to the land. It is merely pointed out that the opinion of the Arkansas Land Commissioner is free from judicial inquiry. This is a far cry from affording the private citizen the due process of the law and is contrary to Section 1 of the 14th Amendment to the Constitution of the United States.

No matter of state police power is involved. The statute in question was obviously designed to provide a method of getting certain land out of the State into

private ownership (and on the tax books). This is a laudable purpose and if only state land is involved no argument as to its effect or validity can be advanced. On the other hand, can the state, by legislative enactment, judicial interpretation, or otherwise, authorize and empower a state official to seize and sell a private citizen's land, without compensation, simply because the state official makes up his mind he thinks it is state land, and thereafter prevent the private citizen claiming ownership access to the judiciary to prove his alleged ownership, on the theory that because the Land Commissioner says the State has an interest in that land, the judicial processes must stop. Due process demands that the private citizen have access to the judiciary to prove, if he can, his ownership, and the mere suggestion of State ownership cannot halt the judicial processes.

If Mr. Kimble's allegation of ownership be true, there can be no doubt, under Arkansas law, that he and his predecessors in title obtained a vested interest and right to this land. The case of *Wallace* v. *Driver*, 61 Ark. 429 established this substantive law of Arkansas in 1896 and it has never been changed. (That Act 282 of 1917, Acts of Arkansas did not purport to change this law see Sec. 10-607 of the Act, Appendix B, p. 17 *infra.*) Since this land constituted vested property rights of an individual, the State of Arkansas, by legislative enactment, judicial decision, or otherwise, cannot seize or deprive him of that property nor deny him access to the judiciary to prove and defend his ownership. *Producers Pipe Line Co.* v. *Martin*, 22 F. Supp. 44; *Downs* v. *Blount*, 170 Fed. 15; *Suydam* v. *Williamson*, 65 U. S. 427, 16 L.ed. 742; and *Humble Oil & Ref. Co.* v. *Sun Oil Co.*, 190 Fed. (2) 191, rehear. den., 191 Fed. (2) 705, cert. den., 72 S.Ct. 362.

3. The decisions of the Arkansas Supreme Court on the question of suits against the state, and in this particular, are in conflict with themselves, and with the decisions of the United States Supreme Court. Perhaps the leading Arkansas decision on this question is *Pitcock* v. *State*, 91 Ark. 527, and the latest decision is the unreported case of *Federal Compress & Warehouse Co.* v. *Call, Commissioner of Labor*, (unreported), decided January 26, 1953, an excerpt of which appears as Appendix C, p. 19 *infra*. The leading cases by the United States Supreme Court and other federal courts on this question are *U. S.* v. *Peters*, 9 U.S. 5, 3 L.ed. 53; *U. S.* v. *Lee*, 106 U.S. 196, 27 L.ed. 171; *Tindall* v. *Wesley*, 167 U.S. 204, 42 L.ed. 137; *Pennoyer* v. *McGonnaughy*, 140 U.S. 117, 35 L.ed. 363; *Hancock* v. *Walsh*, 11 Fed. Cas. No. 6012; and *Tyler* v. *S. Oil & Gas Co.*, 77 Fed. (2) 802.

The Arkansas decisions hold that where the state officer allegedly acts under invalid authority or allegedly exceeds or abuses his lawful authority, even though upon the claim he acts for the state, an action to redress those injuries is not considered a suit against the state. This had been consistent law with the one exception involving actions such as here. No valid distinction exists between the alleged illegal and unconstitutional actions of the Land Commissioner and the same alleged wrongs of the Commissioner of Revenues, Commissioner of Labor, etc. Logically, it is just as heinous for the state official to seize and sell the land of a private citizen as it is for the state official to attempt to enforce an allegedly unconstitutional tax. In this case petitioner began this suit with the allegation that the Commissioner of Lands was acting in excess of lawfully delegated authority, or, that if Act 282 of 1917, Acts of Arkansas, purported to give the Land Commissioner power to seize his land and sell it without compensation and without judicial review, that such law was

unconstitutional for a number of reasons. Under all other decisions of the Arkansas Supreme Court this clearly takes the action out of any argument that it was one against the state and the courts would thereupon proceed to inquire into the merits of the allegations. Instead, however, the Arkansas Supreme Court refuses to permit the lower court to inquire into these matters because of the mere suggestion by the Land Commissioner that the land in question belongs to the State of Arkansas. This provides a different system of laws for one than another contrary to the equal protection of the law and due process of law clause of the 14th Amendment to the Constitution of the United States.

4. As this case now stands it is either (1) not pretended that the Arkansas Land Commissioner had any lawful authority to sell the land of the private citizen, or, (2) that the legislature has constitutional authority to grant him this right and attendant to this power, to grant him absolute immunity from judicial inquiry as to the correctness of his decisions. This Court, in *United States* v. *Lee*, *supra,* specifically condemned this type of legislation or judicial or executive action, and pointed out that it is prohibited, both to the executive and the legislative, as depriving the citizen of property, life and liberty, without due process of law.

5. If the power of the legislative or executive branch of government to thus encroach on private property rights, all without access to the judiciary, is not curbed, it is not too difficult to envision the early disappearance of all rights of the private citizen. The threat of governmental power over the life, liberty and property of the individual has always been a matter of dire concern to all. This case presents a clear-cut example of attempted encroachment by government on the private rights of the citizen pre-

served and guaranteed in the Constitution of the United States.

6. Petitioner alleged in the Chancery Court action which he filed against the Arkansas Land Commissioner to protect and preserve his property rights, that twice before (once shortly after the Arkansas Act of 1917 had been enacted; and again in 1937-1939) the Arkansas Land Commissioner had disclaimed or disavowed State right, title and interest in this particular land. If that be so, and even assuming Act 282 of 1917, Acts of Arkansas, to be valid (which is only assumed at this point and not asserted) the Arkansas Land Commissioner, by carrying that law into effect at those times confirmed the title in the private citizen and rights thus created cannot be divested or impaired and due process observed. *Gritts* v. *Fisher,* 224 U. S. 640, 56 L.ed. 928; *Reichert* v. *Felps,* 6 Wall. 160, 18 L.ed. 849; *Sizemore* v. *Brady,* 235 U.S. 441, 59 L.ed. 308; and *U. S.* v. *Rowell,* 243 U. S. 464, 61 L.ed. 848. See also *Chase* v. *U. S.,* 222 Fed. 593, and *U. S.* v. *Heinrich,* 12 Fed. (2) 938. The majority and concurring opinions of the Arkansas Supreme Court ignore this requirement of due process of law and hold that the truth of this suggestion bears no constitutional weight.

It is plainly in the public interest for this court to settle the question whether the legislative or executive branch of state government may seize and sell land claimed by a private citizen, without compensation, and bar him from taking his cause to the judiciary to prove his alleged ownership. Valuable private property rights are involved and grave constitutional considerations involving the individual should be settled. The protection of personal rights and a system of well regulated liberties are matters of serious concern to every citizen and require adjudication.

SUMMARY

For the foregoing reasons it is respectfully presented that substantial questions of statutory and constitutional considerations are involved, and that settlement by this court of the various questions presented would be plainly in the public interest in that the rights and responsibilities of all citizens would be determined. For those reasons this petition for a writ of certiorari should be granted.

Respectfully submitted

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APPENDIX A

Certificate as to the Existence of a Federal Question

"On motion of Respondent this court, in addition to the orders made herein, orders it to be certified and made a part of the record in this case and of the opinion, as supplemented, concurring opinion, and dissenting opinion and *per curiam* opinion heretofore rendered and made herein, that said respondent properly raised and presented to this court by brief and argument and petition to rehear the federal questions that the granting of Prohibition to prevent R. V. Kimble, a private citizen from asserting his claim of ownership and right of possession to the lands therein claimed in the Pulaski Chancery Court, and preventing said private citizen from being heard thereon in the Pulaski Chancery Court was in violation of the due process clause and equal protection clause of the 14th Amendment to the Constitution of the United States; and that the interpretation of Act 282 of 1917, Acts of Arkansas, that it empowered the Arkansas Land Commissioner to execute a deed to lands claimed by a private citizen which could not be inquired into by a Court was in violation of the due process clause and equal protection clause of the 14th Amendment to the Constitution of the United States; and it became material to the determinaion of this case in this Court to determine said questions so raised by respondent, which questions were considered and determined by this Court adversely to said respondent, as appears from the entry of *per curiam* order overruling respondent's petition to rehear.

"It is hereby certified that this Court is the highest Court of law and equity in the State of Arkansas in which a decision of this case could be had.

"Enter this the 19th day of February, 1953.

Supreme Court of Arkansas

"I, Griffin Smith, Chief Justice of the Supreme Court of Arkansas, do hereby approve entry of the foregoing certification as being the action taken and made by the Supreme Court of Arkansas *en banc* on the day and date aforesaid.

/s/ Griffin Smith,

Chief Justice,

Supreme Court of Arkansas."

APPENDIX B

Pertinent portions of Statute involved:

Act 282 of 1917, Acts of Arkansas, as amended (codified in the Arkansas Statutes of 1947, as indicated).

"Section 10-601. All islands formed or which may form in the navigable rivers or streams of this State, subsequent to the admission of the State of Arkansas into the Union, are hereby declared to be the property of the State and subject to sale and disposition in the manner and form hereinafter provided.

"Section 10-602. Any person desiring to purchase the character of lands described in Section 10-601 may file with the Commissioner of State Lands an application to purchase such lands, describing them by their local name and depositing the estimated cost of survey to be fixed by said Commissioner. Said Commissioner shall thereupon direct the county surveyor of the county in which the lands are located or some other competent surveyor by said Commissioner to accurately survey said lands and compile the field notes and plat the same in reference to the survey of adjacent lands, by the extension of township, range and section lines; said Commissioner shall pay for the cost of survey of lands applied for out of the money deposited as herein provided. Thereafter said lands shall be appraised and treated in all respects as and sold and conveyed by the State in the same manner that lands forfeited to the State for the nonpayment of taxes are now, or may hereafter be sold by the State. If the party depositing the estimated cost of survey purchase the land caused to be surveyed by him, the sum deposited by him shall be deducted from the appraised value; but if one other than the one making the deposit and causing the survey to be made purchase the land, the sum deposited shall be refunded to the party depositing it.

"Section 10-603. The surveyor appointed by said Commissioner, as provided in Section 10-602 hereof, shall immediately proceed to survey the lands applied for, making accurate field notes and platting the same. Said sur-

veyor shall thereupon return said field notes duly certified and a plat in conformity therewith which shall also be certified by said surveyor, to the office of the Commissioner. Said plat shall be approved by said Commissioner. Said field notes and plat shall in all respects conform to the rules and regulations as laid down by the Manual of Surveying for the Survey of Public Lands used in the General Land Office of the United States.

"Section 10-604. Upon receipt of the field notes and plats as provided in Section 10-603 and upon their being filed and approved by said Commissioner, said Commissioner, after having cause said lands to be appraised, shall notify such applicant of the completion of the survey and the appraised value, the Commissioner shall issue the applicant a deed conveying all the right, title and interest of the State of Arkansas in and to said lands.

"Section 10-605. All *bona fide* claimants of lands of the character described in Section 10-601 hereof shall have a preference right of one year after the passage of this act to apply for the survey and purchase of lands claimed by them and in event of conflict between applicants, the question of preference rights and procedure to establish the same shall be determined by the Commissioner under such rules and regulations as he may prescribe not in conflict with the provisions of this act, and the determination of said Commissioner in the absence of fraud or collusion shall be final.

"Section 10-606. It shall be the duty of said Commissioner to certify all lands disposed of by the St. Francis Levee Board as provided in (this section) of the act and all lands disposed of by the State as provided in this Act for the purpose of taxation as is now provided by law, upon the sale of State lands.

"Section 10-607. No lands shall be sold or disposed of by the State under the provisions of this act which are not accessible to agriculture nor which are below mean high water mark of the stream or river in which they are located. Provided that this act shall not apply to accretion lands that heretofore or may hereafter be formed."

APPENDIX C

Excerpt from unreported unanimous opinion of Arkansas Supreme Court by Mr. Justice Ed. F. McFaddin (Mr. Justice Ward not participating), delivered January 26, 1953, in case of *Federal Compress & Warehouse Company* v. *Call, Commissioner of Labor*, Arkansas Supreme Court Docket No. 4-9977.

"II. IS THIS A SUIT AGAINST THE STATE? We answer the question in the negative, and we cite as authority for our holding the case of *Hickenbottom* v. *McCain, Commissioner of Labor*, 207 Ark. 485, 181 S.W. (2) 226. In the Hickenbottom case, it was sought to enjoin the Commissioner of Labor from enforcing the Act creating the Employment Security Division, on the claim that the Act was void. The trial court dismissed the complaint on the theory that it was a suit against the State in contravention of Art. 5, Sec. 20, of the Constitution—the same Constitutional provision here urged by the defendants. We held that the Hickenbottom case was not a suit against the State; and Mr. Justice Frank G. Smith, in the opinion of this Court, quoted from *Pitcock* v. *State*, 91 Ark. 527, 121 S.W. 742, 134 A.S.R. 88, which after reviewing our cases involving suits alleged to be against the State, said:

" 'The only distinction found in these cases is that where the suit is against an officer to prevent him from doing an unlawful act to the injury of the complaining party, such as the taking or trespass upon the property belonging to the latter, the former cannot shield himself behind the fact that he is an officer of the state; and also where the officer refuses to perform a purely ministerial act, the doing of which is imposed upon him by statute. In either of such cases a suit against such an officer is not a suit against the state.'

"Justice Frank G. Smith then continued in the Hickenbottom opinion:

" 'The instant suit is predicated upon the theory and allegation that certain officers under the purported authority of an Act which is unconstitutional and, therefore, void, are about to take the plaintiff's property by imposing a tax, which when imposed becomes a lien upon it. But if the relief prayed is granted no obligation is imposed upon the state. It is, therefore, not a suit against the state. The opinion in *McCain, Commr. of Labor* v. *Crossett Lumber Co.*, 206 Ark. 51, 174 S.W. (2) 114, cites a number of cases to the same effect.'

"So, in the case at bar, there is the claim that Call, acting outside the letter of the statute, has made a void ruling, and that under such ruling, he and his co-defendant are about to take the plaintiffs' property, and it is sought to enjoin these defendants from proceeding under an allegedly void ruling. No money judgment is sought against the State—only the enjoining of allegedly void rulings, and the equalizing of bookkeeping matters just as was authorized in *Call, Comm.* v. *Luten*, 219 Ark. 640, 244 S.W. (2) 130.

"We hold that this is not a suit against the State . . ."

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RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI

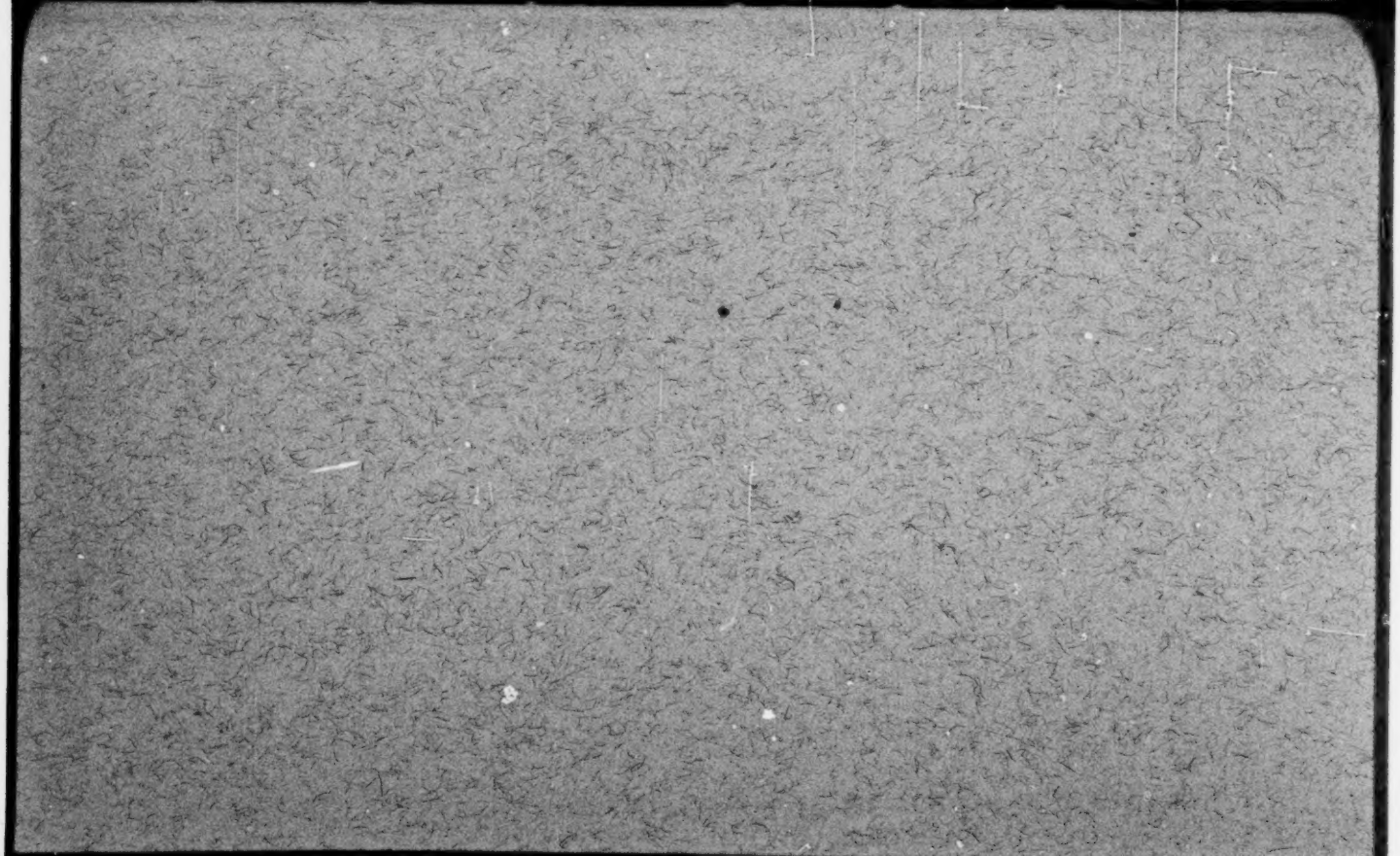
TO THE SUPREME COURT OF THE STATE OF ARKANSAS

RESPONDENT'S BRIEF

Tom Gentry, as Attorney General
for the State of Arkansas.

Of Counsel:
Lamar Williamson, as
Special Assistant to
the Attorney General.

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